IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.480 OF 1989.

The State of Maharashtra. ... Appellant.
Versus.
Pandurang Balu Sutar
(since deceased through LRs.)
1a) Charandas Pandurang Sutar & ors. ... Respondents.

Shri K.K.Tated, A.G.P. for the Appellant.

Shri K.N.Kore for the Respondents Nos.2 to 5, 7 and 9.

CORAM : ABHAY S.OKA, J.

DATED : 21st July, 2006.

P.C.:

1. The office noting shows that the appeal stands abated as against Respondent Nos.6 and 8 in view of the order dated 6th February 1991 passed by the Additional Registrar of this Curt. Shri Tated, the learned A.G.P. appearing for the Appellant pointed out that the notice of Civil Application No.1828 of 2004 has been duly served to the Respondents Nos.6 and 8 and therefore, the office endorsement regarding abatement is incorrect.

2. In view of this contention, I have perused the record. I have perused the report of the Bailiff dated 5th September 1989 submitted on notice of the First Appeal. In the said report which is filed on record he has categorically stated that the Respondents Nos.6 and 8 have expired. That is the reason why the learned Additional Registrar of this Court has passed order dated 6th January 1991 recording that the Appeal stands abated as against the Respondents Nos.6 and 8. The

report of the bailiff is on affidavit. I have also perused the report of the Bailiff dated 10th August 2004 in Civil Application No.1828 of 2004. The report discloses that the notices of Respondents nos.6 and 8 has been accepted by the other two Respondents. Thus the record clearly shows that the Appeal stands abated as against the Respondents Nos.6 and 8.

3. In this Appeal the Appellate-State Government has taken exception to the judgment and award dated 19th August 1988 passed by the District Court in a Reference under section 18 of the Land Acquisition Act, 1894. By the said award, enhancement in compensation has been granted in favour of the Respondents. The Respondents in this Appeal were the original Claimants in the Land Acquisition Reference. The impugned award is joint and indivisible. The Award stands confirmed as against the Respondent Nos.6 and 8 as a result of abatement of the Appeal. As the said Award has become final as against the Respondent Nos.6 and 8 and as the Award is joint and indivisible, the Appeal will not survive as against the other Respondents.

4. Hence in view of abatement of the Appeal as against the Respondents Nos.6 and 8, the Appeal does not survive and the same is dismissed.

Judge.